

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MANHATTAN TOTAL HEALTH & GENERAL
MEDICINE, P.C, MANHATTAN TOTAL
HEALTH & MEDICAL FITNESS, P.C.,
and MANHATTAN TOTAL HEALTH &
PHYSICAL MEDICINE, P.C.,

Plaintiffs,

OPINION

-against-

11 Civ. 2469 (MGC)

CIGNA CORPORATION, CIGNA
HEALTHCARE OF NEW YORK, INC.,
CONNECTICUT GENERAL LIFE INSURANCE
COMPANY, ORTHONET NEW YORK IPA,
INC., and ORTHONET LLC.,

Defendants.

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APPEARANCES:

HALPERN, BROWN & DARIENZO, ESQS.
Attorneys for Plaintiffs
26 Court Street, Suite 901
Brooklyn, New York 11242

By: John A. Darienzo Jr., Esq.
Frank Wieziolowski, Esq.

GIBBONS P.C.
Attorneys for Defendants CIGNA
Corporation, CIGNA Healthcare of
New York, Inc., and Connecticut
General Life Insurance Company
One Gateway Center
Newark, New Jersey 07102

By: E. Evans Wohlforth, Jr., Esq.
Daniel S. Weinberger, Esq.

JONES HIRSCH CONNORS MILLER & BULL P.C.
Attorneys for Defendants Orthonet
New York IPA, Inc, and Orthonet
LLC.

One Battery Park Plaza
New York, New York 10004

By: Kevin M. Ryan, Esq.

Cedarbaum, J.

This is a suit for monetary and injunctive relief under Sections 502(a)(1)(B) and 502(a)(3) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(B), (a)(3). Healthcare provider Manhattan Total Health & General Medicine, P.C and affiliated companies (collectively, "MTH") sue on behalf of approximately 134 of their patients. They allege that insurance plan administrator CIGNA Corporation and affiliates (collectively, "CIGNA") and utilization-review contractor Orthonet LLC and affiliate (collectively, "Orthonet") breached various duties by failing, when making benefit-eligibility determinations, to place decisionmaking authority with physicians specializing in the field of treatment under consideration. Both groups of defendants now move to dismiss MTH's third amended complaint for failure to state a claim.

After four attempts, MTH still has not alleged a duty on Orthonet's part to use same-specialty physicians when conducting

its initial review of patients' claims. The governing insurance plans contain no language to that effect, and MTH has identified no statutory or fiduciary duty supporting a claim under the statute's "catchall" provision, § 502(a)(3).

The latest complaint does, however, properly allege a plan violation by CIGNA, the entity responsible for hearing appeals of denied claims. One of the plans provides that first-level appeals "will be considered by a health care professional of the same or similar specialty as the care under consideration." 3d Am. Compl. Ex. C. The other plan states that the second-level appeals committee "will include at least one Physician reviewer in the same or similar specialty as the care under consideration." Id. Ex. D. Taking as true MTH's allegation that CIGNA failed to use same-specialty physicians at any point in the appeals process, the complaint states a claim for violation of the plans.

Whether MTH's § 502(a)(1)(B) claim against CIGNA is duplicative of its § 502(a)(3) claim, see Varsity Corp. v. Howe, 516 U.S. 489, 515 (1996), need not be resolved at this stage of the proceedings; suffice it to say that any theory of recovery must be grounded in the concrete terms of the governing plans. Like Orthonet, CIGNA has no extra-contractual duty to review claims using same-specialty physicians.

Accordingly, Orthonet's motion is granted and CIGNA's motion is denied. MTH's claims against Orthonet New York IPA, Inc. and Orthonet LLC are dismissed.

SO ORDERED.

Dated: New York, New York
February 18, 2014

S/_____
MIRIAM GOLDMAN CEDARBAUM
United States District Judge